

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BANK OF NEW YORK MELLON,

Case No. 2:15-cv-02026-MMD-CWH

Plaintiff,

ORDER

v.

LOG CABIN MANOR HOMEOWNERS
ASSOCIATION, *et al.*,

Defendant.

AND ALL RELATED CLAIMS

This case arises out of a homeowner's association ("HOA") foreclosure and involves a constitutional due process challenge to Nevada Revised Statute Chapter 116's notice provisions. Before the Court is Defendant/counter-claimant SFR Investment Pool 1, LLC's ("Defendant") Motion to Stay. (ECF No. 75.) Plaintiff/counter-defendant ("Plaintiff") has opposed (ECF No. 76) and Defendant has replied (ECF No. 82.)

The Court had *sua sponte* imposed a temporary stay because of the potential impact of the Ninth Circuit Court of Appeals' decision in *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016), *reh'ng* denied (9th Cir. Nov. 4, 2016). (ECF No. 68.) In *Bourne Valley*, the Ninth Circuit found that Chapter 116's notice provisions as applied to a nonjudicial foreclosure of an HOA lien before the 2015 amendment was facially unconstitutional. *Id.* at 1157-60. The Court subsequently lifted the stay after the Ninth Circuit issued the mandate in *Bourne Valley*. (ECF No. 69.) The Court reasoned that *Bourne Valley*'s holding is binding precedent unless and until it is reversed, though such finality may not occur for months. (*Id.*) Within days, the Nevada

1 Supreme Court in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home*
2 *Mortgage, a Division of Wells Fargo Bank, N.A.*, 388 P.3d 970 (Nev. 2017), reached the
3 opposite conclusion, finding that Nevada's superpriority lien statutes are not facially
4 unconstitutional. The nonprevailing parties in *Bourne Valley* and *Satico Bay* are seeking
5 review of both decisions in the United States Supreme Court. In light of this latest
6 development, the Court finds that a stay is warranted and will grant Defendant's Motion.

7 A district court has discretionary power to stay proceedings in its own court. *Landis*
8 *v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); see also *Lockyer v. Mirant Corp.*, 398 F.3d
9 1098, 1109 (9th Cir. 2005). "A trial court may, with propriety, find it is efficient for its own
10 docket and the fairest course for the parties to enter a stay of an action before it, pending
11 resolution of independent proceedings which bear upon the case." *Leyva v. Certified*
12 *Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "When considering a motion to
13 stay, the district court should consider three factors: (1) potential prejudice to the non-
14 moving party; (2) hardship and inequity to the moving party if the action is not stayed; and
15 (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases
16 are in fact consolidated." *Pate v. Depuy Orthopaedics, Inc.*, No. 2:12-cv-01168-MMD-
17 CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting *Rivers v. Walt Disney*
18 *Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)) (internal quotation marks omitted). See
19 also *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1067 (9th Cir.
20 2007).

21 These three factors weigh in favor of a temporary stay in this case, though the
22 duration of the stay may be extended depending on whether the Supreme Court will grant
23 Bourne Valley and Well Fargo's petitions for a writ of certiorari. Plaintiff insists that a stay
24 will be prejudicial because of the continued damages to Plaintiff caused by Defendant's
25 assertion of title to the property at issue. (ECF No. 76 at 3.) However, any damage to
26 Plaintiff from a stay will be outweighed by the fees that all parties will surely incur from
27 continued litigation because a decision by the Court could be rendered moot by a decision
28 in the certiorari proceedings before the Supreme Court. Until there is finality on the issue

1 of whether Nevada's superpriority lien statutes are constitutional, a stay will benefit the
2 parties and conserve judicial resources.

3 It is therefore ordered that Defendant's Motion to Stay (ECF No. 75) is granted.
4 This action is temporarily stayed until resolution of the certiorari proceedings before the
5 United States Supreme Court in *Bourne Valley* and/or *Saticoy Bay*. The parties must file
6 a status report within 15 days from such resolution. All pending motions for summary
7 judgment (ECF No. 72, 73, 74) are denied without prejudice and may be refiled within
8 thirty (30) days after the stay is lifted.

9 DATED THIS 5th day of April 2017.



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11 MIRANDA M. DU
12 UNITED STATES DISTRICT JUDGE
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